

PATENT  
Serial No. 09/821,122  
Amendment in Reply to Final Office Action of July 28, 2005

REMARKS

Reconsideration of the present application and entry of the present amendment are respectfully requested.

In the Office Action, claims 1, 3-5, 7-9, 11-13, 15-17 and 19-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over European Patent Application No. EP 0 926 894 (Tranchard). Further, claims 2, 6, 10, 14 and 18 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tranchard in view of U.S. Patent No. 6,192,049 (Sohraby).

In response, claims 1-2, 5-6, 9-10, 13-14 and 17-18 have been amended, where independent claims 1, 5, 9, 13 and 17 have been amended to include a feature of dependent claims 2, 6, 10, 14 and 18, which feature has been deleted from the noted dependent claims. Accordingly, no new matter requiring a new search has been introduced and entry of the present amendment is respectfully requested. Further, independent claim 17 has been amended to delete the feature added by the Amendment mailed on April 11, 2005. It is respectfully submitted that claims 1-20 are patentable over Tranchard and Sohraby for at least the following reasons.

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Tranchard is directed to a scrambling unit for a digital transmission system, where data is inserted in the transport stream to make full use of available bandwidth, as recited on column 3, lines 2-3. Column 3, lines 33-40 of Tranchard recites:

Preferably, the scrambling unit also comprises a packet counting means for counting the number of packets of a predetermined packet ID value in the received transport data stream. For example, the packet counting means may be used to count the number of null packets in the data stream to enable evaluation of the space available in the transport stream to insert ECM packets etc. (Emphasis added)

Assuming, arguendo, Tranchard discloses producing an estimate of future available bandwidth, any such estimate is based on the "received transport data stream" or the current transport data stream. The above section of Tranchard further recites "to count the number of null packets in the data stream." This data stream is the received or current transport stream.

Tranchard does not teach or suggest:

a bandwidth estimator producing an estimate of future available bandwidth within said transport stream from future programming to be transmitted by said transport stream (emphasis added)

as recited in independent claim 1, and similarly recited in independent claims 5, 9, 13 and 17. Sohraby is cited to allegedly

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show other claimed features and does not remedy the deficiency in Tranchard.

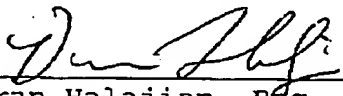
Accordingly, it is respectfully submitted that independent claims 1, 5, 9, 13 and 17 should be allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 2-4, 6-8, 10-12, 14-16 and 18-20 should also be allowed at least based on their dependence from independent claims 1, 5, 9, 13 and 17, as well as for the separately patentable elements contained in each of the dependent claims.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Applicant reserves the right to submit further arguments in support of the above stated position as well as the right to introduce relevant secondary considerations including long-felt but unresolved needs in the industry, failed attempts by others to invent the invention, and the like, should that become necessary.

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In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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